

**59-13-302. Definitions -- License requirements -- Penalty -- Application process and requirements -- Fee not required -- Bonds -- Discontinuance of business -- Liens upon property.**

- (1) As used in this section:
  - (a) "applicant" means a person that:
    - (i) is required by this section to obtain a license; and
    - (ii) submits an application:
      - (A) to the commission; and
      - (B) for a license under this section;
  - (b) "application" means an application for a license under this section;
  - (c) "fiduciary of the applicant" means a person that:
    - (i) is required to collect, truthfully account for, and pay over an amount under this part for an applicant; and
    - (ii) (A) is a corporate officer of the applicant described in Subsection (1)(c)(i);
    - (B) is a director of the applicant described in Subsection (1)(c)(i);
    - (C) is an employee of the applicant described in Subsection (1)(c)(i);
    - (D) is a partner of the applicant described in Subsection (1)(c)(i);
    - (E) is a trustee of the applicant described in Subsection (1)(c)(i); or
    - (F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
  - (d) "fiduciary of the licensee" means a person that:
    - (i) is required to collect, truthfully account for, and pay over an amount under this part for a licensee; and
    - (ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);
    - (B) is a director of the licensee described in Subsection (1)(d)(i);
    - (C) is an employee of the licensee described in Subsection (1)(d)(i);
    - (D) is a partner of the licensee described in Subsection (1)(d)(i);
    - (E) is a trustee of the licensee described in Subsection (1)(d)(i); or
    - (F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to a relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
  - (e) "license" means a license under this section; and
  - (f) "licensee" means a person that is licensed under this section by the commission.
- (2) A person that is required to collect an amount under this part is guilty of a criminal violation as provided in Section 59-1-401 if before obtaining a license under this section that person engages in business within the state.
- (3) The license described in Subsection (2):
  - (a) shall be granted and issued:
    - (i) by the commission in accordance with this section;
    - (ii) without a license fee; and
  - (iii) if:
    - (A) an applicant:

- (I) states the applicant's name and address in the application; and
- (II) provides other information in the application that the commission may require; and
- (B) the person meets the requirements of this section to be granted a license as determined by the commission;
  - (b) may not be assigned to another person; and
  - (c) is valid:
    - (i) only for the person named on the license; and
    - (ii) until:
      - (A) the person described in Subsection (3)(c)(i):
        - (I) ceases to do business; or
        - (II) changes that person's business address; or
      - (B) the commission revokes the license.
- (4) The commission shall review an application and determine whether:
  - (a) the applicant meets the requirements of this section to be issued a license; and
  - (b) a bond is required to be posted with the commission in accordance with Subsection (5) before the applicant may be issued a license.
- (5) (a) An applicant shall post a bond with the commission before the commission may issue the applicant a license if:
  - (i) a license under this section was revoked for a delinquency under this part for:
    - (A) the applicant;
    - (B) a fiduciary of the applicant; or
    - (C) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over a tax under this part; or
  - (ii) there is a delinquency in paying a tax under this part for:
    - (A) the applicant;
    - (B) a fiduciary of the applicant; or
    - (C) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over a tax under this part.
- (b) If the commission determines it is necessary to ensure compliance with this part, the commission may require a licensee to:
  - (i) for a licensee that has not posted a bond under this section with the commission, post a bond with the commission in accordance with Subsections (5)(c) through (g); or
  - (ii) for a licensee that has posted a bond under this section with the commission, increase the amount of the bond posted with the commission.
- (c) A bond under this Subsection (5) shall be:
  - (i) executed by:
    - (A) for an applicant, the applicant as principal, with a corporate surety; or
    - (B) for a licensee, the licensee as principal, with a corporate surety; and
  - (ii) payable to the commission conditioned upon the faithful performance of all of the requirements of this part including:
    - (A) the payment of all amounts under this part;
    - (B) the payment of any:
      - (I) penalty as provided in Section 59-1-401; or

- (II) interest as provided in Section 59-1-402; or
- (C) any other obligation of the:
  - (I) applicant under this part; or
  - (II) licensee under this part.
- (d) Except as provided in Subsection (5)(f), the commission shall calculate the amount of a bond under this Subsection (5) on the basis of:
  - (i) commission estimates of:
    - (A) an applicant's liability for any amount under this part; or
    - (B) a licensee's liability for any amount under this part; and
  - (ii) the amount of a delinquency described in Subsection (5)(e) if:
    - (A) a license under this section was revoked for a delinquency under this part

for:

- (I) (Aa) an applicant; or
- (Bb) a licensee;
- (II) a fiduciary of the:
  - (Aa) applicant; or
  - (Bb) licensee; or
- (III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary of the licensee is required to collect, truthfully account for, and pay over an amount under this part; or
- (B) there is a delinquency in paying an amount under this part for:
  - (I) (Aa) an applicant; or
  - (Bb) a licensee;
  - (II) a fiduciary of the:
    - (Aa) applicant; or
    - (Bb) licensee; or
  - (III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary of the licensee is required to collect, truthfully account for, and pay over an amount under this part.
- (e) Except as provided in Subsection (5)(f), for purposes of Subsection (5)(d)(ii):
  - (i) for an applicant, the amount of the delinquency is the sum of:
    - (A) the amount of any delinquency that served as a basis for revoking the license under this section of:
      - (I) the applicant;
      - (II) a fiduciary of the applicant; or
      - (III) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over an amount under this part; or
    - (B) the amount that any of the following owe under this part:
      - (I) the applicant;
      - (II) a fiduciary of the applicant; and
      - (III) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over an amount under this part; or
  - (ii) for a licensee, the amount of the delinquency is the sum of:
    - (A) the amount of any delinquency that served as a basis for revoking the license under this section of:
      - (I) the licensee;

(II) a fiduciary of the licensee; or  
(III) a person for which the licensee or the fiduciary of the licensee is required to collect, truthfully account for, and pay over an amount under this part; or

(B) the amount that any of the following owe under this part:

(I) the licensee;  
(II) a fiduciary of the licensee; and  
(III) a person for which the licensee or the fiduciary of the licensee is required to collect, truthfully account for, and pay over an amount under this part.

(f) Notwithstanding Subsection (5)(d) or (e), a bond required by this Subsection (5) may not:

(i) be less than \$10,000; or

(ii) exceed \$500,000.

(g) (i) Subject to Subsection (5)(g)(ii), a bond required by this section may be combined into one bond with any other bond required by this chapter.

(ii) For purposes of Subsection (5)(g)(i), if a bond required by this section is combined into one bond with any other bond required by this chapter, the amount of that combined bond is determined by:

(A) calculating the separate amount of each bond required for each type of fuel included in the combined bond; and

(B) aggregating the separate amounts calculated in Subsection (5)(g)(ii)(A).

(6) (a) The commission shall revoke a license under this section if:

(i) a licensee violates any provision of this part; and

(ii) before the commission revokes the license the commission provides the licensee:

(A) reasonable notice; and

(B) a hearing.

(b) If the commission revokes a licensee's license in accordance with Subsection (6)(a), the commission may not issue another license to that licensee until that licensee complies with the requirements of this part, including:

(i) paying any:

(A) amounts due under this part;

(B) penalty as provided in Section 59-1-401; or

(C) interest as provided in Section 59-1-402; and

(ii) posting a bond in accordance with Subsection (5).

(7) (a) If any person ceases to be a supplier within the state by reason of the discontinuance, sale, or transfer of the person's business, the supplier shall notify the commission in writing at the time the discontinuance, sale, or transfer takes effect.

(b) The notice shall give the date of discontinuance and, in the event of a sale, the date of the sale and the name and address of the purchaser or transferee.

(c) Taxes on all special fuel delivery or removal made prior to the discontinuance, sale, or transfer, shall become due and payable on the date of discontinuance, sale, or transfer.

(d) The supplier shall make a report and pay all taxes, interest, and penalties and surrender to the commission the license certificate that was issued to the supplier by the commission.

(8) (a) The tax imposed by this part shall be a lien upon the property of any

supplier liable for an amount of tax that is required to be collected, if the supplier sells the business, stock of goods, or quits business, and if the supplier fails to make a final return and payment within 15 days after the date of selling or quitting business.

(b) The successor or assigns, if any, shall be required to withhold a sufficient amount of the purchase money to cover the amount of the taxes that are required to be collected and interest or penalties due and paid under Sections 59-1-401 and 59-1-402 until the former owner produces a receipt from the commission showing that the taxes have been paid or a certificate stating that no amount of tax is due. If the purchaser of a business or stock of goods fails to withhold sufficient purchase money, the purchaser shall be personally liable for the payment of the amount that is due.

Amended by Chapter 382, 2008 General Session